IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 24 of 1988
Date of decision February 1 , 2011

Smt. Rattan Kaur and others

..... Appellants

Versus

Shri Harbans Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present:- Mr. Neeraj Khanna , Advocate for
Mr. L. M. Suri, Senior Advocate
for the appellants.

Mr. Suvir Dewan , Advocate
for respondent No.3.

None for respondent Nos. 1 and 2.

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1. Whether reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the reporters or not? No
3. Whether the judgment should be reported in the digest?No

K. Kannan, J (oral).

1. The appeal is against dismissal of the petition for compensation in a case of a person who was a motor cyclist and hit admittedly by a truck belonging to the insured. The Court found even in the absence of examination of driver or the owner that the claimant had not proved the case of negligence. I cannot accept the finding and I will reverse the same and hold that the driver of the truck was responsible for the accident. Between a motor cyclist and a truck driver, I will find the driver of the truck to be always negligent and more so, in a case where the driver does not examine himself to offer evidence as regards the same.

2. The dismissal can not also be on the ground of limitation. It is no longer relevant in a case where the appeal is pending and the order of the Tribunal could not be taken as having become final. As regards the issue of law of limitation this point has been dealt with by the Hon'ble Supreme Court in **Dhanna Lal Vs. D.P.Vijay Vargiya 1996 ACJ 1013.** The issue of limitation is therefore irrelevant now.

3. The deceased was 65 years of age and was said to be a pensioner drawing ₹8,000/- as pension. He was also said to be employed to augment his resources and getting ₹4,000/-. The claimants were wife and children who were 21 years and 19 years of age. I will take 1/3rd of the whole income to go for personal deduction and take contribution to the family at ₹8,000/-. I will adopt a multiplier of 7 and take the loss of dependency as ₹67,300/-. I will add ₹5,000/- towards loss of consortium and ₹2500/- towards loss to estate and ₹2,000/- for funeral expenses to find the total compensation payable at ₹76,800/-. The amount shall also carry interest at the rate of 7.5% per annum from the date of petition till the date of payment. The amount shall be distributed amongst the claimants equally. The liability shall be on the Insurance Company.

4. The appeal is allowed.

(K. KANNAN)
JUDGE

February 1, 2011
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